IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.509 OF 2005
IN
APPEAL FROM ORDER NO.457 OF 2005

Parasmal V.Jain & Ors. .. Applicants
V/s
Rupesh Kirti Parmar & Ors. .. Respondents.

Mr.R.P.Oza for the Applicants.

CORAM: A.S.OKA,J.
DATE : 05.05.2005.

P.C.:

1. Respondent Nos.1 to 5 waive the service. Service of Respondent No.6 is dispensed with. Taken up forthwith for hearing. The Appellants are third parties and they are not parties to the suit. The Appellants claim to have purchased suit premises from the Respondent No.6. The original plaintiffs in the suit filed by them have contended that the premises purchased by the Appellants/Applicants is a garage and it is sanctioned as a garage. The case of the original plaintiff is that an Idol is sought to be intalled in the garage and it will be used for religious purposes or for the purposes of the temple. The prayers made in the notice of motion were limited. The prayers for temporary injunction were for restraint in respect of:-

i) Using said structure on the ground floor on the north-east corner of the said property i.e.Rejendra Vihar situate at C.S.No.1022, 8-8A Khetwadi, 12th Cross Lane, Mumbai 400 004 for the purpose other than

for the purpose of garage and/or using the said structure for the unauthorised purpose;

ii) Using the said structure for the purpose of temple and/or for religious purpose;

iii) In any manner creating nuisance, annoyance, disturbance and obstruction to the ingress and egress of the plaintiffs in respect of the said property i.e. Rajendra Vihar situate at C.S.No.1022, 8-8A, Khetwadi, 12th Cross Lane, Mumbai 400 004.

2. While dealing with the prayer for grant of ad-interim injunction, the learned Trial Judge has appointed the Court Receiver in respect of the suit structure and has directed the Court Receiver to put his lock and seal on the suit structure pending the notice of motion. If the scope of the prayers made in the notice of motion is considered, obviously, such order could not have been passed.

3. I have perused the sanctioned plan which is tendered across the bar. The suit premises is shown as a garage in the sanctioned plan. Obviously, as the sanctioned plan stands today, the suit premises cannot be used as temple or for religious purposes.

4. Hence, till the final disposal of this appeal, the execution and operation of impugned judgment stands stayed subject to condition that Appellants will not use

the suit premises as a temple and the Appellants will not use the same for any religious purposes.

5. The learned Trial Judge will proceed with hearing of Notice of Motion in accordance with law uninfluenced by this order passed today. This order passed today will not preclude the Appellants from applying to the competent authority for change of user in accordance with law. The learned Counsel appearing for the Respondent Nos.1 to 5 states that without prejudice to their rights and contentions, they will implead the Appellants as parties to the suit.

6. Civil Appeal is disposed of accordingly.

(JUDGE)